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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,960	03/11/2004	Ziva Listenberg	3083/2	4002

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EXAMINER	
SMITH, JEFFREY A	

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/796,960	LISTENBERG, ZIVA	
	Examiner	Art Unit	
	Jeffrey A. Smith	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9 and 13-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 13-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The response filed February 8, 2006 has been entered and considered.

Claims 1-9, and 13-18 are pending.

Claims 10-12 have been cancelled.

An action on the merits of claims 1-9, and 13-18 follows.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Schlamp (U.S. Patent No. 5,431,250).

Schlamp discloses a shopping system and method for consumable items ("food stuffs": col. 4, lines 3-8).

The system comprises, *inter alia*, at least one display module (12) including a plurality of display items (14: col. 1,

lines 36-45 and col. 2, lines 45-48); a customer-operated shopping list assembly system or information storage device (13: col. 2, lines 48-58); a service point (11: col. 2, line 59-col. 3, line 9); and a warehouse and packing facility (3). The warehouse and packing facility is at a location separate from a location of said at least one display module (col. 2, lines 36-44).

The formation storage device includes a wireless mechanism (col. 5, lines 3-7) and a bar code scanner (col. 2, lines 48-59).

The functional recitations "receives said shopping list with delivery instructions from said customer" (claim 1) and "for giving said shopping lists with delivery instructions to a service point" have been considered. Such recitations do not move to further structurally distinguish the system of the instant invention from the system of Schlamp. Moreover, the system of Schlamp is reasonably capable of performing these functions in light of the fact that a customer must identify which of the actual product storage areas he is to take delivery of his purchases (see col. 1, lines 36-45). That is because his car is located at the periphery of a city at a special park and ride center adjacent one of the storage areas and the system

requires that this location be made known in order to assemble the products at the correct storage area.

The recitation that "said delivery instructions being indicative of a requested delivery point for delivery of said purchase items" has been considered. Such recitation serves to further modify the functional recitation "receives said shopping list with delivery instructions from said customer" discussed above. The further modifying language does not move to structurally distinguish the system of the instant invention from the system of Schlamp.

The recitation "and in an area off limits to said customer" has been considered. However, such recitation merely places a limitation on the customer (i.e. places access restrictions on the customer) rather than on an element of the system. Accordingly, this recitation does not further distinguish the system of the instant invention from the structure of the system of Schlamp. Notwithstanding this, however, Schlamp teaches that "[t]he assembled products are entered in a section 32' of the product distribution facility 32 by the designated personnel" (col. 3, lines 35-37: emphasis added). Additionally, Schlamp teaches that "[t]he purchaser can then remove the products which have been collected for him from this section after, for example, opening an appropriate flap or similar arrangement

which normally seals the section. Product distribution facilities 32 are preferably arranged in such a way in a wall 36 of the product distribution station 3 that a purchaser can drive in his car to the immediate vicinity of the distribution apertures 33 and thus load the products directly into his car" (col. 3, lines 51-59: emphasis added). These passages reasonably teach that the warehouse and packing facility contains an area off limits to the customer.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlamp (U.S. Patent No. 5,431,250).

Schlamp does not disclose the specific dimensions of the display module.

The Examiner notes, however, that Schlamp teaches that "storage space and sales space are in short supply and are expensive" (col. 1, lines 14-17). Schlamp solves this problem by providing "specimens of products" at a sample shop (1) while storing the actual inventory at products storage areas (col. 2, lines 13-19). Accordingly, the space required at the sample shop for display of the specimens is greatly reduced and would require a display module of a size which accommodates as few as one specimen for each product.

It would have been obvious for one of ordinary skill in the art to have provided a display module having a horizontal depth of less than 50cm. Such range would have allowed for the display of specimens of the type disclosed by Schlamp (e.g. food stuffs) while minimizing the space required for such display. The skilled artisan would have optimized such value so as to either reduce the total square footage required for a given number of specimens for display or so as to display more specimens per square foot. Such optimization is well within the level of skill in the art given Schlamp's concern for reducing over-all costs per unit area of space (col. 1, lines 9-17; and col. 2, lines 13-19).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlamp (U.S. Patent No. 5,431,250) in view of Byrley (U.S. Patent No. 4,735,290).

Schlamp does not disclose that said display item is an original package with at least a portion of the contents removed.

Byrley, however, in a similar system (col. 2, lines 33-51), teaches that it is common practice to provide a customer access only to an empty product package. The content package identifies a product desired for purchase. See col. 1, lines 8-34.

It would have been obvious to one of ordinary skill in the art to have provided the system of Schlamp to have included an original package with at least a portion of the contents removed in order to have discouraged pilferage of the sample article.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlamp (U.S. Patent No. 5,431,250) in view of Official Notice.

The Examiner notes that the cash register of Schlamp is located at a resource area for providing services to the customer (see Fig. 1). Schlamp, however, does not disclose at least one booth for providing a service of a type selected from

the group consisting of product promotion and recreation for said customer.

The Examiner takes Official Notice that it is notoriously well-known for shopping systems to offer booths which offer customers both product promotions (e.g. sample items) and recreation (e.g. a facial). Such known systems do so for the purposes of exposing customers to various products or product benefits they may not have purchase or experienced before, but may enjoy. Such offers serve as enticements which are designed to persuade a prospective customer to purchase certain products.

It would have been obvious to one of ordinary skill in the art to have provided the system of Schlamp to have further included at least one booth of the type recited in order to promote certain products by persuading a potential customer to purchase such products.

Claims 13, 14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlamp (U.S. Patent No. 5,431,250) in view of Tracy et al. (U.S. Patent No. 5,979,757).

Schlamp discloses a method for selling consumable items substantially as recited.

Schlamp does not disclose receiving delivery instructions from a customer and transferring instructions to a warehouse and packing facility.

Tracy et al., in a similar method (col. 7, line 62-col. 8, line 10), discloses that a customer includes a delivery time and location (col. 15, lines 56-59).

It would have been obvious to one of ordinary skill in the art to have provided the method of Schlamp to have included the steps of receiving delivery instructions from a customer, and transferring said instructions to the warehouse and packing facility of Schlamp in order to have satisfied the delivery request of the customer in an efficient manner (col. 15, lines 56-59).

Regarding claim 18, the combination of Schlamp and Tracey et al. does not provide a plurality of sales locations. However, to have provided the combination of Schlamp and Tracey et al. to have included a plurality of sales locations in light of the sample shop (1) already taught by Schlamp would have been obvious to one of ordinary skill in the art in order to have provided various shopping locations throughout a downtown area (see Schlamp at col. 2, line 36-38) in order to have provided greater shopping convenience to a larger number of potential

shoppers and thereby increase product sales for the system as a whole.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlamp (U.S. Patent No. 5,431,250) and Tracy et al. (U.S. Patent No. 5,979,757), as applied to claim 13, and further in view of Official Notice.

The combination of Schlamp and Tracy et al. does not teach the steps recited here.

However, the Examiner takes Official Notice that it is notoriously well-known in many methods for selling to include steps of receiving a new variety of consumable items.

In the Schlamp/Tracy et al. paradigm, for example, certain produce may "come into season" which would have been stored at the Schlamp warehouse. Appropriately, the display items representing the new produce would have been updated so that customers are apprised of its availability.

It would have been obvious to one of ordinary skill in the art to have provided the Schlamp/Tracy et al. method to have further included these steps in order that inventory may be kept dynamic (based upon availability of certain products, for example) and that the demands of the customers (seasonal demands for produce, for example) may be met.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlamp (U.S. Patent No. 5,431,250).

Schlamp does not disclose a plurality of sales locations. However, to have provided the system of Schlamp to have included a plurality of sales locations in light of the sample shop (1) already taught would have been obvious to one of ordinary skill in the art in order to have provided various shopping locations throughout a downtown area (see col. 2, line 36-38) in order to have provided greater shopping convenience to a larger number of potential shoppers and thereby increase product sales for the system as a whole.

Response to Arguments

Applicant's arguments filed February 8, 2006 have been fully considered but they are not persuasive.

Applicant's remarks that Schlamp is inefficient and renders the shopping procedure more complex is not persuasive. The claims, as amended, do not patentably distinguish the instant invention from the system and method of Schlamp and Schlamp as modified.

Applicant has not adequately traversed the Examiner's holding of Official Notice, and accordingly, the notice items are taken as an admission that such items are prior art. See MPEP 2144.03(c).

Applicant's argument with regard to the rejections of claims 13-15 under 35 USC 101 are persuasive and are herein vacated.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is (571) 272-6763. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert M. Pond can be

reached on 571-272-6760. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jeffrey A. Smith
Primary Examiner
Art Unit 3625

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